

## **§ 20.701**

(2) At or before the time specified in the subpoena for compliance, whichever is earlier.

(c) If the subpoena is served at a hearing, the person to whom it is directed may, in person at the hearing or in writing within a reasonable time fixed by the ALJ, ask the ALJ to quash or modify it.

(d) The ALJ may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue.

### **Subpart G—Hearings**

#### **§ 20.701 Standard of proof.**

The party that bears the burden of proof shall prove his or her case or affirmative defense by a preponderance of the evidence.

#### **§ 20.702 Burden of proof.**

(a) Except for an affirmative defense, or as provided by paragraph (b) of this section, the Coast Guard bears the burden of proof.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order bears the burden of proof.

#### **§ 20.703 Presumptions.**

In each administrative hearing, a presumption—

(a) Imposes on the party against whom it lies the burden of going forward with evidence to rebut or meet the presumption; but

(b) Does not shift the burden of proof in the sense of the risk of non-persuasion.

#### **§ 20.704 Scheduling and notice of hearings.**

(a) With due regard for the convenience of the parties, and of their representatives or witnesses, the ALJ shall, as early as possible, fix the date, time, and place for the hearing and notify all parties and interested persons.

(b) The ALJ may grant a request for a change in the date, time, or place of a hearing.

(c) At any time after commencement of a proceeding, any party may move to expedite the proceeding. A party moving to expedite shall—

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(1) Explain in the motion the circumstances justifying the motion to expedite; and

(2) Incorporate in the motion affidavits supporting any representations of fact.

(d) After timely receipt of the motion and any responses, the ALJ may expedite pleadings, pre-hearing conferences, and the hearing, as appropriate.

#### **§ 20.705 Failure to appear.**

The ALJ may enter a default under § 20.310 against a respondent threatening to fail, or having failed, to appear at a hearing unless,—

(a) Before the time for the hearing, the respondent shows good cause why neither the respondent nor his or her representative can appear; or,

(b) 30 days or less after an order to show good cause, the respondent shows good cause for his or her failure to appear.

#### **§ 20.706 Witnesses.**

(a) Each witness shall testify under oath or affirmation.

(b) If a witness fails or refuses to answer any question the ALJ finds proper, the failure or refusal constitutes grounds for the ALJ to strike all or part of the testimony given by the witness or to take any other measure he or she deems appropriate.

#### **§ 20.707 Telephonic testimony.**

(a) The ALJ may order the taking of the testimony of a witness by telephonic conference call. A person presenting evidence may by motion ask for the taking of testimony by this means. The arrangement of the call must let each participant listen to and speak to each other within the hearing of the ALJ, who will ensure the full identification of each so the reporter can create a proper record.

(b) The ALJ may issue a subpoena directing a witness to testify by telephonic conference call. The subpoena in any such instance issues under the procedures in § 20.608.

#### **§ 20.708 Witnesses' fees.**

(a) Each witness summoned in an administrative proceeding shall receive the same fees and mileage as a witness